Unto the Right Honorable the Lords of Council and Session

THE PETITION of JOHN GIBSON Writer in EDINBURGH

HUMBLY SHEWETH,

THat where I having purchased the half of a [illegible] in St. *Ninians Raw*, from the deceast *David Hodge* [illegible] of 50 *Lib. Sterl.* And the other half having belonged to *James Hodge* Wright, Burgess in *Edinburgh*, his Nephew, who being under some Circumstances, Particularly an Inhibition at the instance of the said *David Hodge* [illegible] a Depending Proces betwixt them, before the Bailies of *Edinburgh*, [illegible] Act of Compt and Reckoning was Extracted, and the Proces had [illegible] a Considerable time, They Submitted the Cause to their Respective [illegible] tors, who by their Decreet Arbitral, did decern the said *James Hodge* [illegible] to the said *David*, the Summ of 211 *Lib.* 19 *ss.* 8 *d.* Which Summ I did [illegible] to the said *James*, in order to purge the said Inhibition, and gave him the Superplus, Extending to 50 *Lib. Sterl.* The very same I payed for the other half to his Uncle, And was so Cautious, that I took his Discharge, bearing the Receipt of the foresaid Summ, and the payment of the Superplus; whereupon he by his Disposition of the date the 30 of *October* 167[illegible] [illegible] of Money, did dispone to me his half of the foresaid [illegible] position Written by *John Alexander* Writer to the Signet, [illegible] mous Witnesses.

Upon the Procuratorie of Resignation in Disposition, I [illegible] a Charter from the Magistrates of *Edinburgh*, upon the [illegible] upon Duely infeft, and upon the 6. of *April*, and my Seasine [illegible] upon the 16 of the said Moneth. By Vertue whereof, I [illegible] have Continued in the Peaceable and Uninterrupted [illegible] within these two years; *Barbara Hodge*, Sister to the [illegible] duced her self to Extream Poverty, falls upon the usual [illegible] Persons to get some Money, *Viz.* By procuring the Ben[illegible] Roll, and then intenting Processes, without any just Grou[illegible] amongst others, intents a Proces of Reduction [illegible] to her Brother, though he is never yet proven to be [illegible] Living Conscious of my self, That my Right was [illegible] Objection Adequat [illegible] as being a meanes to encourage such Groundless [illegible]

The Benefit of the poor Roll

When this Action came on to be heard before [illegible] ed there could be no Proofs at her instance, as [illegible] presumed, he is still alive, untill he be proven Dead, [illegible] vice was not a sufficient Title to Reduce my Right, Compleated by infeft-

ment,

ment, and though this point was Over-ruled, and Proceſs allowed at her Inſtance, And that the Cauſe was in my Lord *Lawderdales* Lide Bill Roll, ready to be Called, yet upon what motive I know not ſhe procures a Warrand to Inroll the Cauſe, in the nixt Weeks Roll, before my Lord *Fountainhal*, And at Calling, I alledged that the Purſuer could not lift her Proceſs from one Ordinary to another; But that conform to the Act of Parliament, the Cauſe moſt Continue before the Lord Ordinarie, before whom it was firſt Called, untill that the ſame came to an Act or Decreet, But this was Repelled in Reſpect of the Warrand, and Remit in preſence; And then I repeated my Defences which I Conceaved Relevant to Eleid the Proceſs, but my Lord Ordinarie gave an Interloquitor before Anſwer, allowing the *Purſuer* to addduce what Probation ſhe could, Anent the Qualifications of Fraud and Circumvention founded one; As alſo to proye the particulars Condeſcended one, for evincing her Brothers Weakneſs, Fatuity, or Furioſity, and refuſed me your Lorſhips Anſwer, as to the Relevancy before Probation, but allowed me to apply to your Lordſhips; And this matter being of farr greater Conſequence to the whole Leidges in General, then to me in Particular, And though the Act be before Anſwer, yet it being a great Hardſhip to be at the Expence of Extracting an Act, and leading a Probation in a Caſe, where I can have no Recourſe nor Expectation to be Re-imburſed from the Purſuer, who has the Benefite of the Poors Roll, And *Fruſtra probatur, quoad probatum non Relevat.*

I Humbly Begg leave to Repreſent to your Lordſhips, why there can be no Term aſſigned, but I Abſolvized from this Groundleſs and Malicious Proceſs.

As to the Reaſon Lybeled upon this Fraud and Circumvention, this is clearly taken off, and Redargued by the foreſaid Diſcharge; My Diſpoſition bearing for Summs of Money, and a Declaration of the party, after I was infeft, and in Poſſeſſion bearing that my Diſpoſition was for an Onerous Adequat Cauſe to his Utility and Profite; And the Purſuer does adduce no manner of Adminicle or Document, nor the leaſt Struction for Supporting of the leaſt preſence of Fraud or Circumvention, and therefore as the *Purſuer* gave her Proceſs ſeveral Shapes, and did at firſt found upon the foreſaid Reaſon, and that I a Writer had bought a Plea, yet finding that his alledgance was Groundleſs, paſt therefrom, and at the Debate inſiſted only upon a new Reaſon of Reduction. *Viz.* The Defuncts Weakneſs and Fatilitys, and that he was Fatuous and Furions, and gav ein a Condeſcendance at Randum, which thought it be as Groundleſs and Calumnious as the former, yet *I* contend it is no wayes Relevant for the Reaſons following. 1*mo.* By our Law Writ can not be taken away be Witneſſes, except in very few Caſes, and which is our great Security, And if it were Otherwayes, Our property ſhould be at a great Uncertainty; And upon this Account, a Probation by Witneſſes to take away Writ, ought rather to be Reſtricted and Reſtraitned, than incouraged and Extended, and which was the Deſign of the late Act of Parliament, Declairing matters of Truſt, only *Probable* by Writ or Oath. 2*do.* Though by the Laws of all Nations, Deeds of Idiots or Furious *Perſons* be Reduceable, yet by Our Law, before the 66. *Act. Parl.* 8. *Ja.* 3. Such Alienations by Furious or *Idiot* perſons were only Reduceable from the time of the Serving the Brives of idiotrie Fatuity or Furioſity, and tho by that Act, its provided that when a *Perſon* is found by an Inqueſt to have been *Idiot* or Furions, all Alienations made by him are Reduceable from the time of his Idioty or Furioſity, yet it ſeems plain from the ſaid Act, that a perſon moſt be found and Declaired *Idiot*, before any Alienation or Diſpoſition made by him, can be Reduced upon that Head, And *I*

Sublume,

Subsume, that seeing the Defunct, *James Hodge* my Author was never Reckonod, farr less Convict or Declared Furious or *Idiot*; But on the Contrair was known to be a Skilfull Trades-man, though of no great Management (which *Persons* of the greatest Sense and Reason may be guilty off) went Abroad a Souldier, and immediatly listed as a Sergeant; Of which Office, no *Person* of that Temper could have been Capable; There can be no *Process* upon any such pretences now sustained against me, who has been above 18 years in the *Peaceable* and Uninterrupted Possession.

Though your Lordships has sometimes Reduced deeds, granted be a person, Furious or Idiot, though not so found and Cognosced by the veridict of an inquest, yet that was when the Process was intented in the Persons own Lifetime, at the instance of himself or his Tutors, or nearest of Kin; Whereby your Lordships being the Grand inquest in Civil Affairs could Cognosce and discover from the persons Habit and Temper and Behaviour, the Condition and Circumstances; But no such Process ought to be sustained, at the instance of an Heir for Reducing of Deeds, done by the Defunct, who was never in his own time, found or declared Idiot or Furious.

4*to.* Though your Lordships has sustained a Reduction, at the instance of an Heir, upon the head of Idiotry or furiosity, as upon the 26*th*, of *July* 1638 *Loch* contra *Dick*; Yet that was where the Subject was a Moveable Bond, latent and lying by the Defunct, which is the reason of the dicision; Whereas my Disposition quarrelled, is of an Heritable subject, whereupon I was publickly Infeft, and in *Possession* near the space of 20 Years, without the least Interruption.

5*to.* The Laws of all Nations as well as ours, puts Idiots or furious Persos under the Tutory of their nerest Agnats upon his ground, that *quo Redit Hereditas eo et Tutelionis.* And therefore, when any Person is Idiot or furious, his neaverst Agnats, ought to take the Tutorie and manadgement of both his Person and Goods, and if they do it not, but suffer him to Intromet and dispose thereon, most justly they may be said, to forfault, any Right they may expect upon his decease, seeing if they would not take the Trouble, they deserve no profite or advantadge, but my Author outlived my Right and Possession, for the space of 18 years, and for ought I know, is yet alive; And neither the Pursuer nor any of his Relations, ever offered either to Brand him with Idiotry or furiosity, or to quarrel or impugn my Right; And herefore now after his alledged decease, they ought not to be heard upon any such pretence: And by all our decisions, it will not be found, that ever a Reduction was sustained upon such pretences against a person in my Circumstances.

6*to.* If such alledgances should be sustained, at the instance of an Heir, against a pnrchas of this Nature, there should no purchase in the Kingdome be secure, that has been made within these 40 years. But Processes of Reduction against all upon such like pretences, which would be a very good Fond for Lawers, and a fertile Field for Pleas, against which our Law has been so carefull to provide.

7*mo.* The Lord Ordinary, not only allowed the Pursuer to prove, that the Defunct was Idiot or Furious, But allowed her even to prove Acts of levity or weackness; Which I Humbly Conceive, has no shaddow of Relevancy, for every one is *Dominus & Arbiter res suæ & utcunque de re sua Libere disponere*, and our Law has a Remedy against prodigals by Interdiction; But where a person was not interdicted, to sustain the alledgeance of Levity

migh

might be of very dangerous Conſequence, and it cannot well be Conceived where it might Land, for perſons of the greateſt Conduct and Precaution, may be gilty of ſome particular Act of weakneſs or Levity, and this point is clearly determined in the Caſe, betwixt *Grierſon* and *Telfer* upon the 24*th.* of *July* 1678, where a Reduction of a Bond granted by a Nephew to his Uncle, to whom afterward he was *Interdicted* upon the head, that he was a facile levish and weak perſon, was not ſuſtained; And the Lords found that Levity without *Interdiction* or Fraud, could annull no Deed, though Gratitous; And my Caſe is much ſtronger, having been both a Stranger to the Defunct, my Right for an Onerous and an Adequat Cauſe. And ſeeing that this Matter ſeems to be of great import, and Concern to the Leidges, and that it were of a Dangerous Conſequence, to ſuſtain a Probation by Witneſſes, at the inſtance of an Heir, upon the alledgance of *Idiotry*, Furioſity, or Levity of a Defunct, who was never ſo found nor declaired, to take away a real Right compleat by Infeſtment, Corroborat by ſo many years uninterrupted, and peaceable Poſſeſſion, during the [redacted] Life.

granters

It is humbly Beg'd, Your Lordſhips would be pleaſed to take the Premiſſes to your ſerious Conſideration, and to find the Alledgance of Idiotry, Furioſity, or Levity, at the inſtance of an Heir, not Relevant againſt me, who has been in the peaceable Poſſeſſion, by vertue of an Infeſtment following upon a Charter of Reſignation, near the ſpace of 18 years during the granters time: And he never ſo found and declared. And therefore to Aſſoilzie me from this Groundleſs and Calumnious Proceſs, at the inſtance of a perſon, againſt whom I can have no Recourſe for Refounding me my Expences, ſhe having the beneſite of the Poors Roll,

According to Juſtice, and your Lordſhips Anſwer.